

Initial Statement of Reasons for the Adoption of Regulation Sections 19041 and 19044

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS

Section 19041 of the Revenue and Taxation Code (Rev. and Tax. Code) allows taxpayers to file a protest from a Notice of Proposed Assessment. Other than on the back of the Notice of Proposed Assessment form, no directions are provided as to how the filing of a protest is to be accomplished.

Section 19044 (Rev. and Tax. Code) allows taxpayers to have an oral hearing on a protest. There are currently no forms or letters which describe the nature of the oral hearing and the rights and responsibilities of a taxpayer with respect to an oral hearing. The specific statute authorizing an oral hearing and other statutes provide some detail as to a taxpayer's rights with respect to an oral hearing but does not provide significant details.

Prior to August of 1998, the department had issued an Information Sheet (FTB 1037) which provided a description of the oral hearing process. On August 17, 1998, the Office of Administrative Law (OAL) issued 1998 OAL Determination No. 16 [Docket No. 91-014] that held that FTB 1037 was an "underground regulation." As a result of the OAL determination, FTB 1037 is no longer a valid document. The proposed regulations are intended to provide guidance to taxpayers as to the manner in which a protest is to be filed and the manner in which an oral hearing will be conducted. The proposed regulations establish the rights and responsibilities of taxpayers with respect to protests and oral hearings on protests.

SPECIFIC PURPOSE OF THE REGULATION

The proposed regulations will make specific the provisions of Sections 19041 and 19044 of the Revenue and Taxation Code and will establish with certainty the rights of taxpayers and provide them information as to how the department will handle protests and conduct oral hearings on protests.

NECESSITY

The need for the proposed regulations is established by the ruling of the Office of Administrative Law issued on August 17, 1998. (1998 OAL Determination No. 16 [Docket No. 91-014] "Request for Regulatory Determination filed by RICHARD GOBEL for W.H.SMITH concerning "Protest Hearings Information Sheet" issued by the Franchise Tax Board.")

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.

The Franchise Tax Board did not rely upon any technical, theoretical, or empirical studies, reports

or documents in proposing the adoption of this regulation.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR SMALL BUSINESS.

The Franchise Tax Board has determined that there were no alternatives considered which would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons or small businesses than the proposed regulations.

ADVERSE ECONOMIC IMPACT ON BUSINESS

The Franchise Tax Board has determined that there will be no adverse economic impact on business from the adoption of the proposed regulations.